

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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IN THE MATTER OF THE APPLICATION OF)
CHESAPEAKE UTILITIES CORPORATION FOR)
APPROVAL OF NATURAL GAS EXPANSION)
SERVICE OFFERINGS) PSC DOCKET NO. 12-292
(FILED JUNE 25, 2012))

ORDER No. 8210

FOR ADMISSION AS AN INTERVENOR

AND NOW, this 22nd day of August, 2012, pursuant to the authority granted to me in PSC Order No. 8174 dated July 3, 2012, this Hearing Examiner having considered the Petition for Leave to Intervene ("the Petition") filed by the Delaware Association of Alternative Energy Providers, Inc. ("DAAEP") on August 8, 2012;

NOW, THEREFORE,

1. The Petition is granted.
2. In PSC Order No. 8174 (July 3, 2012), the Commission ordered that the deadline for filing Petitions for Intervention was August 10, 2012. (Order, ¶6.)
3. Thus, DAAEP's Petition to Intervene was timely filed.
4. Petitioner Chesapeake Utilities Corporation ("Chesapeake"), a regulated entity, opposes DAAEP's intervention.
5. DAAEP is an association of a number of Chesapeake's competitors. (DAAEP's Reply dated August 17, 2012, ¶1 & fn 1.) In its Reply, DAAEP identified its members, none which are regulated by the Commission. (Id.)

6. DAAEP's Petition alleges that "DAAEP's members share a similar interest in the distribution and sale of alternative energy supplies and services to their customers for use in heating and other residential and commercial uses." (DAAEP's Petition, ¶11.) DAAEP's Petition also alleges that "[t]he docket will have a direct impact upon DAAEP's members, and their employees, who may be significantly harmed" if the Commission approves Chesapeake's rate application. (*Id.*) Chesapeake has an unregulated propane subsidiary, Sharp Propane, which competes with all of DAAEP's members. (DAAEP's Reply, ¶6.) Finally, DAAEP alleges that DAAEP's interests will not be adequately represented by the parties to this proceeding. (*Id.* at ¶5.)

7. This is not the first time that Chesapeake and DAAEP have sparred as to whether DAAEP should be allowed to intervene in a docket involving Chesapeake's service expansion in Sussex County. On December 4, 2007, after much legal wrangling, the Commission permitted DAAEP to intervene in a Chesapeake service expansion docket.

8. In permitting DAAEP to intervene, the Commission held that "DAAEP's interest in this matter is firmly established by a) the prospect that this case [PSC Docket No. 07-186] will result in the modification of a settlement agreement to which DAAEP is a signatory (approved in PSC Docket No. 97-72T); and b) DAAEP's status as a (former) party to the recently closed PSC Docket No. 05-322, the main issue of which has been transferred to this case." (PSC Order No. 7325 (December 4, 2007), ¶4.)

9. According to DAAEP, it should be permitted to intervene in this docket because " ... Chesapeake's Application seeks to modify the

extension programs agreed to as part of the 2008 Settlement Agreement [in PSC Docket No. 07-186]." (DAAEP's Reply, ¶4.) DAAEP reasons "[i]t is hard to understand why, if DAAEP was a critical party to the 2008 Settlement Agreement, when Chesapeake seeks to make wholesale changes to its expansion tariff and procedures, DAAEP should not be a party." (Id.)

10. DAAEP further alleges that Chesapeake is proposing "changes to allow Chesapeake to evaluate the economics of service installations and extensions to new and existing residential developments based on an Internal Rate of Return Model as opposed to the existing six (6) times net revenue test."¹ (DAAEP's Petition, ¶7.) According to DAAEP, Chesapeake's Application also seeks approval of an alternative rate design and rate structure "in a to-be defined area in southeastern Sussex County" and a new Distribution Expansion Service ("DES") rate for all Chesapeake customers.² (Id. at ¶8.) Finally, DAAEP's Petition to Intervene raises the issue of whether Chesapeake has complied with the 2008 Settlement Agreement signed by the parties, the Public Advocate and PSC Staff, by establishing an experimental rate. (Id. at ¶9.)

¹ Chesapeake's Application states that "the six (6) times revenue test does not provide an accurate measure of the economics of expanding service to existing residential developments." (Chesapeake's Response, ¶10.)

² Chesapeake's Application states that the "[r]evenue collected [from the proposed DES rate] would be utilized by Chesapeake to support the necessary resources and administrative requirements to facilitate the large number of anticipated conversions from propane, fuel oil and electricity to natural gas." (Chesapeake's Response, ¶8.) DAAEP argues that this constitutes unlawful "subsidization." (DAAEP Petition, ¶¶6,8) I do not know if that is true at this early stage but I agree with DAAEP's alternative argument that "the issues cannot be determined on the face of Chesapeake's Application." (Id. at ¶6.)

11. For purposes of considering the merits of DAAEP's Petition and Reply, I assume as true the representations made therein. I find that DAAEP has satisfied the intervention requirements of Rule 21 of the Commission's *Rules of Practice and Procedure*.

12. First, DAAEP's arguments as to why it should be permitted to intervene in this docket are virtually the same reasons why the Commission permitted DAAEP to intervene in PSC Docket No. 07-186, the prior Chesapeake expansion docket.

13. Specifically, in PSC Order No. 7325 (Dec. 4, 2007), the Commission permitted DAAEP to intervene in that service expansion docket holding that "DAAEP's interest in this matter is firmly established by a) the prospect that this case [PSC Docket No. 07-186] will result in the modification of a settlement agreement to which DAAEP is a signatory (approved in PSC Docket No. 97-72T); and b) DAAEP's status as a (former) party to the recently closed PSC Docket No. 05-322, the main issue of which has been transferred to this case." I find that the Commission holding in 2008 applies because DAAEP is a signatory to the 2008 Settlement Agreement and the issues from the prior expansion document will now be addressed in this docket, along with Chesapeake's proposed modifications.

14. More importantly, I find that DAAEP's specific allegations in this docket require the Commission to allow DAAEP to intervene. Again, DAAEP alleges that Chesapeake is: a) proposing to dispense with the revenue test agreed upon by the parties in the prior docket; b) seeks an alternative rate design and rate structure "in a to-be defined area in southeastern Sussex County" and a new Distribution

Expansion Service ("DES") rate for all Chesapeake customers; and c) DAAEP questions whether Chesapeake has complied with the parties' 2008 Settlement Agreement by establishing an experimental rate. (*Id.* at ¶¶7,8,9.)

15. Although well-crafted, Chesapeake's arguments have not persuaded me to disregard prior Commission intervention rulings. Chesapeake argues that DAAEP is not seeking to protect the "public interest," but rather seeks to protect its own interests. (Chesapeake, ¶1.) However, in the past, the Commission has often permitted competitors to intervene in all types of utility cases.

16. For example, in a 2005 Delmarva natural gas docket, the Commission permitted DAAEP to intervene holding that DAAEP "represents interests [that] are not otherwise specifically represented in this matter and without whose participation the record may not be fully developed" and "granting of the petition would broaden the participation of interested persons in this docket and provide additional information and insights from which the Commission and the public policy of the State would benefit." (PSC Order No. 4014 (May 23, 1995).)

17. In conclusion, I find that DAAEP has satisfied the intervention requirements of Rule 21 of the Commission's *Rules of Practice and Procedure*, as previously interpreted by the Commission.

18. Finally, I find that, at this time, no conditions should be imposed upon DAAEP's intervention. In prior dockets involving these parties, the Commission did not impose any conditions upon DAAEP's intervention and the dockets were completed.

19. Pursuant to Commission Rule 11, any confidentiality, proprietary or privilege issues, or unwarranted or unduly burdensome discovery issues, should be directed to me if the parties cannot reach an agreement. Although I will not allow this docket to become a "fishing expedition" at Chesapeake's expense, Chesapeake is a regulated entity which must set its rates in accordance with Delaware law. I will handle any such disputes on a case-by-case basis.

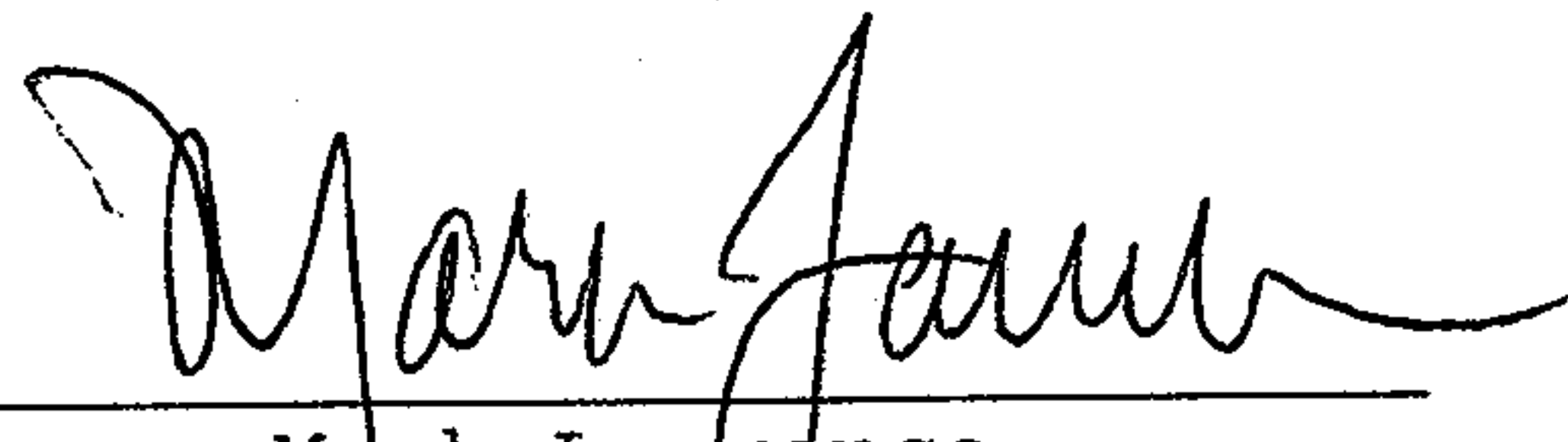
20. As provided in Commission Rule 21(c), this Order is subject to interlocutory appeal to the Commission as prescribed by Rule 28.

Now, therefore, **IT IS ORDERED:**

1. Accordingly, the Petition for Intervention filed by the Delaware Association of Alternative Energy Providers, Inc. ("DAAEP") is **GRANTED**.

2. DAAEP shall be added to the Service List for this Docket, as described in its Petition to Intervene.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Mark Lawrence", is written over a horizontal line.

Mark Lawrence
Hearing Examiner